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80-1394
No.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1980

EMMETT C. WILSON, JR. and
VERNA I. WILSON,
Appellants,

vs.

CALIFORNIA HEALTH FACILITIES COMMISSION,
Defendant and Appellee.

On Appeal From the Supreme Court of the State of California

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

Whether the public disclosure provisions of the California Health Facilities Disclosure Act violate appellants' right of privacy under the U.S. Constitution.

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JURISDICTIONAL STATEMENT

Emmett C. Wilson, Jr. and Verna I. Wilson, appellants, appeal from the final judgment of the Court of Appeal of the State of California, entered September 17, 1980. A hearing of the action was denied by the Supreme Court of California on November 19, 1980. The Court of Appeal held that the California Health Facilities Disclosure Act, Health and Safety Code, Sections 440 et seq., and specifically section 442 (a), is constitutional and does not invade Appellants' right to privacy as protected by the Fourteenth Amendment to the Constitution of the United States.

OPINIONS BELOW

The opinion of the Court of Appeal, which appears in the Appendix D herein, is reported at 110 Cal. App. 3d 317 (1980).

The Decision of the California Health Facilities Commission, the agency charged with the interpretation and enforcement of the statute involved herein is reprinted at Appendix B. The judgment of the trial court and its Findings of Fact and Conclusions of Law are reprinted at Appendix C. None of said decisions and judgments have been published.

JURISDICTION

The judgment of the California Court of Appeal finding the California Health Facilities Disclosure Act constitutional, was entered on September 17, 1980, Appendix D. A petition for hearing by the California Supreme Court was denied on November 19, 1980, Appendix E.

This appeal is being docketed in the Court within ninety days from the denial of a hearing by the California Supreme Court. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(2).

CONSTITUTIONAL PROVISIONS AND STATUTES

Fourteenth Amendment; Section One:

"No State shall . . . deprive any person of life, liberty, or property, without due process of law."

California Health Facilities Disclosure Act (Health and Safety Code, Sections 440 et seq.).

See Appendix F for Sections 441, 441.18, 442, 442.3.

Section 442 (a):

> "The commission shall maintain a file of all the reports filed under Section 441.18 and 442.1 at its Sacramento office. Subject to such rules as the commission may prescribe, such reports shall be produced and made available for inspection upon the demand of any person."

RAISING THE FEDERAL QUESTION

Appellants first raised their claim that the statutes involved violated their constitutional rights under the 14th amendment in their petition opposing application of the Disclosure Act. At the first hearing before the California Health Facilities Commission Appeals Committee the committee found that it lacked the jurisdiction to determine the constitutional issues raised by appellants' petition and referred the matter to the full Commission.

Subsequently, at the hearing before the full Commission, the constitutional issues were again raised and the Commission found the Act to be constitutional (Appendix B).

Thereafter, appellants brought an action for Declaratory Relief and Mandamus in the Superior Court of the State of California, again raising the constitutional issues. The trial court denied appellants request for relief and found the Act constitutional (Appendix C). The Court of Appeals affirmed the decision (Appendix D). The Supreme Court of the State of California refused to hear the matter, thus rejecting the federal constitutional claim (Appendix E).

STATEMENT OF THE CASE

Appellants, Emmett C. Wilson, Jr., and Verna I. Wilson, husband and wife, jointly own and operate as general partners Monte Villa, a limited partnership. The only limited partner is Aline Wilson, mother of Emmett C. Wilson, Jr. Monte Villa is an acute psychiatric hospital, licensed by the State of California Department of Health in 1975. Monte Villa receives no public funds, that is, no subsidies, MediCal or Medicare, but operates solely from funds received from private paying patients.

Appellee California Health Facilities Commision is commissioned by the State of California for enforcing the California Health Facilities Disclosure Act (Health & Safety Code, §§ 440 et seq.). That Act, enacted in 1971, requires all health facilities operating in California to file for public disclosure certain reports, including detailed financial statements. (§ 441.18, Appendix F, pp. 2 to 5)

On or about January 22, 1976, appellee notified appellants of the accounting requirements of disclosure. Thereafter, appellants filed their petition opposing application of the accounting and reporting requirements as to them upon constitutional grounds.

At the hearing before the Appeals Committee of the Commission, the accountant for Monte Villa testified that the information required by the forms exceeded by ten times the information requested by any governmental agency, including the Internal Revenue Service or the Federal Bureau of Investigation. Appellant Emmett C. Wilson, Jr., stated his objection to the disclosure requirements, not as a refusal to disclose the information to governmental authorities, but as an assertion of his right

to privacy to prevent disclosure of his financial status to the public.

The Appeals Committee of the Commision found that it lacked jurisdiction to determine the constitutional issues raised by the petition and referred the matter to the full Commission. On April 6, 1976, the full Commision met. Counsel for appellants argued the unconstitutionality of the Act on the ground that it violated appellants' privacy, and further, that it placed an undue financial burden on appellants.

The Commission found that "the Health Facilities Disclosure Act, section 442 of that Act and its application to the petitioners is constitutional."

Thereafter, appellants filed a Complaint for Declaratory Relief and Petition for Writ of Mandamus in the Superior Court, alleging the unconstitutionality of the Act as an invasion of their privacy, a taking of their property in violation of due process, and a violation of their First, Fourth, and Fourteenth Amendment rights. Appellants sought a declaration that the Act is unconstitutional and an injunction prohibiting its enforcement.

Appellee, in its Answer, asserted the constitutionality of the Act and requested that appellants be ordered to comply with it. At the trial the parties presented to the court the stipulated evidence and argued their respective positions. Thereafter, on September 8, 1978, the Court rendered its Memorandum Decision upholding the Act's constitutionality, denying appellants' request for declaratory relief, and ordering appellants to comply with the reporting provisions of the Act.

The Court of Appeal affirmed the trial court's judgment, finding the Act constitutional under the Constitutions of both California and the United States. The Court concluded that the right to privacy asserted by appellants was not protected by the U.S. Constitution in view of the State's asserted exercise of its police power in the area of health and safety.

The Supreme Court of the State of California denied appellants' petition for hearing. Consequently, appellants appeal to this Court.

THE QUESTION IS SUBSTANTIAL

The question as to the existence and extent of individual privacy is substantial. This Court has not ruled on the specific issue even though a similar issue has arisen in two lower federal courts wherein conflicting results occurred. (*Humana of Virginia, Inc. v. Blue Cross of Va.* (E.D. Va. 1978) 455 F. Supp. 1174 and *Westchester Gen. Hosp. v. Dept. of Health, Etc.* (M.D. Florida 1979) 464 F. Supp. 236).

The federal legislation examined in those two federal cases differed substantially from the California legislation in that it did not provide for public disclosure of the information gathered by the governmental agency. In *Humana,* the court considered a federal H.E.W. regulation requiring the plaintiff to disclose to the public upon request the "provider cost reports" filed with Blue Cross as a condition of plaintiff's participation in Medicare. The court ruled that such disclosure would seriously impair plaintiff's negotiations with its employees and reveal to competitors its techniques for minimizing costs. Thus, the

requirement would cause substantial harm to plaintiff's competitive position. The court enjoined enforcement of the regulations under an exception to the Freedom of Information Act.

The *Westchester* case involved requirments similar to those in the *Humana* case, but the court reached a contrary decision. There, the court reasoned that if all hospitals had to file the reports, all had the same problems. Therefore, no one's position could be destroyed competitively. The court stated:

> "Cost reports are public records about public business, *involving the expenditure of public funds,* and therefore, it is not in the public interest to withhold the reports from the public." (464 F. Supp. at 257.) (Emphasis added.)

Each of the federal cases involved two major distinguishing features. First, the hospitals involved were receiving public funds, including Medicare funds. Here, appellants received no public funds, either through Medicare, Medical, or government contracts. Thus, these governmental regulations should not apply.

Secondly, the federal legislation provided only for filing of reports with the governmental agency. The legislation itself did not require public disclosure of the information. However, the legislation in this case provides for public disclosure to any member of the public upon request.

Various federal cases have recognized the right to privacy. *NAACP v. Alabama* (1964) 377 U.S. 288, invalidated a state law requiring the NAACP to list its members.

The Court of Appeal of California cited several federal cases discussing individual rights versus the governmental interest in safeguarding health and safety. *Roe v. Wade* (1973) 410 U.S. 113, involved abortion statutes. *Kelley v. Johnson* (1976) 425 U.S. 243, upheld police department regulations concerning hair length of officers. *New Orleans v. Dukes* (1976) 427 U.S. 297, involved regulations of street vendors in the French Quarter of New Orleans. *Duke Power Co. v. Carolina Environ. Study* (1978) 438 U.S. 59, affirmed limitations on liability for nuclear accidents. None of these cases involved privacy rights; rather they concerned the balance between individual and governmental rights in other areas.

Only *Whalen v. Roe* (1977) 429 U.S. 589, discussed an issue of privacy. There, legislation required reporting to a governmental agency of the names and addresses of persons given narcotics prescriptions. Even there, however, public disclosure of the patient's identity was strictly forbidden and carefully guarded against. The Court stressed the importance of privacy versus unwarranted disclosure. Only this case, wherein the right of privacy was upheld, is germane to the issue presented by appellants.

Appellants reiterate that they have no objection to disclosure to public agencies of information required. Appellants recognize the interest of the State in health facilities. However, appellants strongly oppose dissemination of their personal financial information to the general public whose interest cannot be determined to be for a reasonable and valid purpose. Appellants further object to interference in their privacy by government when no public funds in any form whatsoever are received by appellants in the operation of their facility.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Dated: February , 1981

Respectfully submitted,

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(Appendices follow)

Appendix A

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In the Supreme Court of the State of California

1 Civil 47759

Emmett C. Wilson, Jr. and
Verna I. Wilson,
Plaintiffs and Appellants,

vs.

California Health Facilities Commission,
Defendant and Respondent.

[Filed Jan. 30, 1981]

Notice of Appeal to the Supreme Court of the United States

NOTICE IS HEREBY GIVEN that Emmett C. Wilson, Jr. and Verna I. Wilson, the appellants above-named, hereby appeal to the Supreme Court of the United States from the final judgment of the Court of Appeal of the

State of California, affirming the judgment in favor of Respondent, entered in this action on September 17, 1980, hearing denied by this Court on November 19, 1980.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).
1-27-81

/s/ MERRILL M. HIRSCH

Attorney for Appellants

Appendix B

California Health Facilities Commission
In the Matter of the Petition of
Emmett C. Wilson and Verna I. Wilson,
General Partners in Monte Villa, a Limited Partnership.

[Filed July 9, 1976]

DECISION

The California Health Facilities Commission convened on April 6, 1976, in the Sacramento Room of the Sheraton Airport Hotel, 1177 Airport Boulevard, Burlingame, California. The Commission, acting by referral from the Appeals Committee, considered the petition of Emmett C. Wilson and Verna I. Wilson, General Partners in Monte Villa, a Limited Partnership, and the evidence received in support thereof and based upon such record:

FINDS: 1. that Monte Villa, a Limited Partnership, operates a licensed Acute Psychiatric Hospital, Facility No. 431200824;

2. that the Commission has heard this matter by referral from the Appeals Committee which determined that it lacked jurisdiction to decide the constitutional issues raised by the petition;

3. that it needs clear authority in law to declare its own enabling statutes unconstitutional, and that such clear authority is not available;

4. that the only issues before it was the constitutionality of the California Hospital Disclosure Act, the constitutionality of Section 442 of the Disclosure Act, and the

constitutionality of the application of the Disclosure Act to the subject hospital, Monte Villa;

CONCLUDES that the Health Facilities Disclosure Act, Section 442 of that Act and its application to the petitioners is constitutional.

DETERMINES that the Petition of Emmett C. Wilson and Verna I. Wilson, as General Partners in Monte Villa, a Limited Partnership, be and hereby is denied.

Dated at San Francisco, California on the 24th day of June 1976

/s/ PHYLLIS R. SMITH
Phyllis R. Smith, Chairman

/s/ A. B. HALVERSON
A. B. Halverson, Vice Chairman

/s/ STODDARD P. JOHNSON
Stoddard P. Johnson

(Absent)
E. Kash Rose, M.D.

/s/ J. E. SMITS
J. E. Smits

/s/ SAMUEL J. TIBBITTS
Samuel J. Tibbitts

/s/ ELIZABETH ROWEN
Elizabeth Rowen

I concur with the decision but voted against it on the grounds that I am not qualified to vote on the constitutionality of the law.

Appendix C

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In the Superior Court of the State of California
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No. 719-697

Emmett C. Wilson, Jr., and
Verna I. Wilson, individually and as
general partners in Monte Villa,
a limited partnership,
Plaintiffs and Petitioners

vs.

California Health Facilities Commission,
Defendants and Respondents

[Filed Oct. 23, 1978]

JUDGMENT

This case came regularly on for trial on July 14, 1978, the Honorable Frank W. Shaw presiding without a jury. The Plaintiffs were represented by J. Robert Foster and the Defendant was represented by John M. Fredenburg. The parties agreed to and filed with the Court a Trial Stipulation establishing the issues to be tried and the

facts and evidence to be considered. The Court accepted this Trial Stipulation and the Court considered this stipulation and heard and considered the arguments of counsel. Based on the above:

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Plaintiff's request for declaratory relief is denied;

2. Plaintiffs are ordered to comply with the reporting provisions of the California Health Facilities Disclosure Act, Health & Safety Code Section 440 *et seq.*; and

3. Judgment is entered against the plaintiffs and in favor of the Defendant for the cost of this action.

Dated: October 13, 1978

/s/ FRANK W. SHAW
Judge of the Superior Court

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In the Superior Court of the State of California
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No. 719-697

Emmett C. Wilson, Jr., and
Verna I. Wilson, individually and as
general partners in Monte Villa,
a limited partnership,
Plaintiffs and Petitioners

vs.

California Health Facilities Commission,
Defendants and Respondents

[Filed Oct. 23, 1978]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial, without a jury, before the Honorable Frank W. Shaw, Judge of the Superior Court for the City and County of San Francisco, presiding, in Department 26, on July 16, 1978.

J. Robert Foster appeared as counsel for the Plaintiffs. John M. Fredenburg appeared as counsel for the Defendant.

The parties agreed to and filed with the Court a Trial Stipulation establishing the issues to be tried and the facts and evidence to be considered. This Trial Stipulation and arguments of counsel was heard and considered and on September 8, 1978 the Court announced its Intended Decision. Being fully advised of the above, the Court hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiffs, Emmett C. Wilson and Verna I. Wilson are husband and wife, who jointly own and act as general partners of Monte Villa, a limited partnership, which is also Plaintiff herein. The only limited partner is Emmett C. Wilson's mother, Aline Wilson. Plaintiff Monte Villa is an acute psychiatric hospital, unrestricted, licensed as Facility No. 431200824. The State Department of Health is the licensor.

2. California Health Facilities Commission is commissioned for the State of California for enforcing the California Health Facilities Disclosure Act (§ 440 and following, Health and Safety Code).

3. The California Health Facilities Disclosure Act was established by the California legislature in Chapter 1242, Statutes, 1971, the same being an Act requiring all health facilities which operate in the State of California to file for public disclosure with the California Health Facilities Commission established by such Act, uniform reports of health facility cost experience, together with detailed financial statements showing income, expenses, assets, liabilities and net worth of such facility individually.

4. The California Health Facilities Disclosure Act became effective on March 4, 1972, and is currently in full force and effect.

5. This Act is applicable to the business in which the Plaintiffs are engaged and licensed.

6. On or about January 22, 1976, by letter from the California Health Facilities Commission signed by the Executive Director, Robert W. Murch, said Commission informed the Plaintiff that the accounting requirements of the California Health Facilities Disclosure Act were allowed by the Commission to be substantially modified for the reports due April 30, 1976, with the understanding that the accounting system would be used in the next fiscal year.

7. On February 5, 1976, Plaintiff filed a petition opposing application of the accounting and reporting requirements to him upon constitutional grounds.

8. On March 9, 1976, a hearing was held in Sacramento before the Appeals Committee of the California Health Facilities Commission. On April 6, 1976, the Appeals Committee concluded it lacked jurisdiction to decide the constitutional issues raised by Plaintiff and therefore referred the petition to the full Commission.

9. By stipulation of counsel for Plaintiffs, the matter was referred to the Commission as a whole, because of the constitutional issues involved. This matter came for hearing on Tuesday, April 6, 1976, and by further stipulation of the parties, the prior transcript of testimony was entered into evidence.

10. On April 6, 1976, the Commission met in San Mateo County and conducted an additional hearing. On June 24, 1976, that Commission made its decision that the Act should apply to Plaintiff and was constitutional.

11. Plaintiffs have exhausted their administrative remedies.

12. Plaintiffs have failed to file the disclosure reports due the California Health Facilities Commission for the fiscal years ending December 31, 1975, 1976, and 1977.

13. Findings of Fact which are Conclusions of Law shall be deemed such.

CONCLUSIONS OF LAW

1. The reporting and disclosure provisions of the California Health Facilities Disclosure Act, Health & Safety Code § 440 *et seq.*, do not violate the Plaintiffs' rights to privacy as created by Article I, Section 1 of the California Constitution and/or the 14th Amendment of the United States Constitution.

2. Plaintiffs are currently in violation of the California Health Facilities Disclosure Act by their failure to report and are therefore ordered to comply with its provisions.

3. Conclusions of Law which are Findings of Fact shall be deemed such.

Dated: October 13, 1978

/s/ FRANK W. SHAW
Frank W. Shaw
Judge of the Superior Court

Appendix D

In the Court of Appeal of the State of California

First Appellate District

Division Two

CERTIFIED FOR PUBLICATION

1 Civil No. 47759

(Super. Ct. No. 719697)

Emmett C. Wilson, Jr., et al.,
Plaintiffs and Appellants,
vs.
California Health Facilities Commission,
Defendant and Respondent.

[Filed Sept. 17, 1980]

Emmett C. and Verna Wilson, as individuals and general partners in Monte Villa, a limited partnership, appeal from a judgment denying declaratory and injunctive relief and ordering them to comply with the financial reporting requirements of the California Health Facilities Disclosure Act (Health & Saf. Code, § 440, et seq.),[1] contending that section 442, subdivision (a) invades a zone of privacy protected by the Fourteenth Amendment of the U.S. Constitution, and article I, section 1 of the state Constitution. For the reasons set forth below, we have concluded that the

[1]Hereafter all references are to the Health and Safety Code unless otherwise specified.

statute is constitutional and that, therefore, the judgment must be affirmed.

The facts were stipulated and found as follows by the court:

Emmett C. and Verna I. Wilson are husband and wife who jointly own and act as general partners of Monte Villa, a limited partnership; the only limited partner is Emmett's mother Aline (collectively Wilson). Monte Villa is an acute psychiatric hospital licensed by the State Department of Health.

The California Health Facilities Commission (Commission) is an independent body established by the California Health Facilities Disclosure Act (Act) to enforce its provisions (§ 441.3). The Act requires all licensed health facilities which operate in the state to file with the Commission for public disclosure uniform reports of health facility cost experience, together with detailed financial statements. The Act applies to the health facility operated by Wilson (§ 441.2).

In January 1976, the Commission informed Wilson of the Act's accounting and reporting requirements. Wilson opposed these requirements, contending that the Act required disclosure of private financial status, imposed an unduly costly and burdensome accounting system, and required disclosure of information that would harm its competitive position. After a hearing, the Commission's appeals committee concluded that it lacked jurisdiction. By stipulation, the matter was referred to the Commission and the prior transcript admitted into evidence. The Commission conducted an additional hearing and determined

that the Act was constitutional and applied to Wilson. This action ensued.

The purposes of the Act are detailed by section 441, quoted below.[2]

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[2]"The Legislature hereby finds and declares:

"(a) It is the *policy of this state,* as declared and established in this part, *to require all health facilities* which operate in this state *to file for public disclosure with the* California Health Facilities *Commission* which is established by this part such *uniform reports of health facility cost experience* in the provision of health care services as are provided for under this part in accord with the systems of accounting approved under this part, *for all of the following purposes:*

"(1) Encouraging *economy and efficiency* in their provision of such services in this state.

"(2) *Enabling public agencies* of this state which purchase health care services under, or which have administrative responsibility for, publicly financed health care plans or programs *to make informed decisions in such purchasing or administration.*

"(3) *Encouraging public and private third party payors for health facility services to take the information provided under this part into account in establishing reimbursement rates to assure health facilities of a fair and reasonable payment for such services rendered.*

"(b) It is the *policy* of this state *that in order to achieve uniform and equitable statewide implementation of the policies of this part and to allow for comparisons of the performance of particular health facilities subject to its provisions, it is necessary to require that* every person, political subdivision of the state, or any governmental agency within the state, that establishes, conducts, operates, manages, maintains, or controls in this state any health facility *complies with the provisions of this part.*

"(c) It is the *policy* of this state to have health facilities *make available to the public the highest capabilities of health science in an effective, efficient manner.* It is the policy of this state to provide *reasonable and appropriate safeguards to insure*

The record indicates that the Act was the Legislature's response to rapidly increasing health care costs, which threatened to deny needed services to many Californians unless the health care system was made more accountable. Hospitals, as a group, account for the largest single cost component of medical care. The hospital industry is not subject to normal market forces which can be an effective control on efficiency or cost. The Act was a political compromise between those seeking greater governmental control over the industry and the sectors of the industry resisting all government regulation. The disclosure aspects, based on a uniform accounting and reporting system, were an attempt to provide the public and the government with the necessary data to make sound judgments for the planning and purchase of hospital services.

Wilson here focuses primarily on the aspect of the right of privacy involving the individual interest in avoiding

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that the total cost of health facility services is reasonably related to the total services offered by health facilities that the aggregate rates of health facilities are reasonably related to the aggregate costs of health facilities and that the *rates charged by health facilities are uniform for all purchasers of health facility services, because the state has an obligation to assure access and availability of high quality, efficiently provided, economical health facility services for all persons* in this state *and because the expenditure of public funds of this state for providing health facility* services to many persons *has a large financial impact on the public funds* of this state. Therefore, *it is the declared policy of this state that health facilities are affected with the public interest, involved in the distribution of essential services, and obliged to furnish services to the general public at fair, equal, and nondiscriminatory rates.*" (Emphasis added.)

disclosure of personal matters[3] (Whalen v. Roe, 429 U.S. 589, 599).

The fedarl right to privacy is a personal one that protects individuals and not the financial records of business entities (Bellis v. United States, 417 U.S. 85), which are not within the protected zone (Fisher v. United States, 425 U.S. 391; United States v. Miller, 425 U.S. 435). By analogy, Wilson attempts to bring the instant case within the small family partnership exception to the Bellis rule (at p. 101), recognized in United States v. Slutsky (S.D. N.Y. 1972) 352 F.Supp. 1105.[4]

Even assuming, as Wilson argues, that the statute restricts a fundamental right, when the state asserts important interests in safeguarding health, review is under the rational basis standard (Roe v. Wade, 410 U.S. 113, 154). The court in Roe held at pages 163-165, that a state may, without encroaching upon any right of privacy, further its important interests in the areas of health and

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[3]The other aspects, the right to be free from government surveillance, primarily protected by the Fourth Amendment, and the interest in independence in making certain kinds of personal decisions (marriage, procreation, contraception, family relationships, child rearing and education) and the First Amendment penumbra, are not in issue (Whalen v. Roe, supra, fn. 26, at p. 600).

[4]In Slutsky, two brothers formed a partnership and ran a country club with a significant number of employees on the payroll. The partners were so intimately involved with the business that the court concluded that the partnership records were the purely private and personal records of the partners-brothers and, therefore, subject to the Fifth Amendment privilege against self-incrimination.

The instant matter, of course, was tried solely on grounds of privacy and there are no facts to warrant the application of the Slutsky exception or the Fifth Amendment.

safety. The lesson of Roe for the instant case is that the disclosure of certain financial information by health care facilities is a reasonable means to assure the access and availability of high quality health facility services for all persons.

Where, as here, the statute primarily concerns health and safety, no fundamental right to privacy is at stake. In Kelley v. Johnson, 425 U.S. 238, 247, the court commented: "The promotion of safety of persons and property is unquestionably at the core of the State's police power." The court concluded that where such safety interest is involved, the test to be implemented is whether there is no *rational* connection between the regulation and the promotion of safety of persons and property."

In Whalen v. Roe, supra, 429 U.S., at pages 597-598, the court reiterated the test of Kelley v. Johnson, supra, 425 U.S. 238, and ruled that New York's patient identification requirement for the prescription of certain dangerous drugs was a reasonable exercise of the state's broad police powers. The court also noted that there were sufficient legislative hearings to support the legislation, and that the state had a right to experiment with legislative solutions to the problem.

Similarly, where the economic regulation is involved, the rational basis test is proper. Recently, the United States Supreme Court approved such a rationale in New Orleans v. Dukes, 427 U.S. 297, stating, at page 303, that "States are accorded wide latitude in the regulation of their local economics under their police powers. . . ." In Duke Power Co. v. Carolina Env. Study Gp., 438 U.S. 59, the court relied

on the traditional presumption of constitutionality generally accorded economic regulations, and concluded that the legislation must be upheld, absent proof of arbitrariness or irrationality on the part of the legislative body.

The purposes of the Act, as quoted above at footnote 2, indicate that it encompasses both health and economic regulation. While the Act's primary purpose is to make available to the public the highest capabilities of health science, the Legislature also expressed a concern for economy and efficiency in the provision of health care services.

Wilson does not complain of the submission of the required financial reports to the Commission, but of their potential disclosure to the public pursuant to section 442, subdivision (a), set forth, so far as pertinent, below.[5] Relying on Humana of Virginia, Inc. v. Blue Cross of Va. (E.D. Va. 1978) 455 F.Supp. 1174, 1178, Wilson argues that the potential public disclosure of the reports filed with the Commission jeopardizes Wilson's competitive position, particularly in its negotiating leverage with employees. We find more persuasive, however, the reasoning of Westchester Gen. Hosp. v. Dept. of Health, etc. (M.D. Fla. 1979) 464 F.Supp. 236, 245-246. Since the financial reports required by the Act apply to all of the state's health care facilities, the same information will be equally accessible to everyone. In other words, every health care facility will have equal access to the cost report information about its

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[5]"(a) *The commission shall maintain a file of all the reports filed* under Sections 441.18 and 442.1 at its Sacramento office. Subject to such rules as the commission may prescribe, *such reports shall be produced and made available for inspection upon the demand of any person.*" (Emphasis added.)

potential competitors. Where every member of the relevant, competitive market is affected similarly, it is somewhat specious to argue that equally available information is anti-competitive.

As here the state's legitimate interests in health and safety are involved, it may properly exercise its police powers and no doctrine prohibits public dissemination. The Legislature sets forth as one of the major purposes of the Act to furnish the public individually and collectively with sufficient information to render sound judgments.[6] The Legislature found that the hospital industry was not subject to the normal controls of supply and demand, that there was a continuing spiral of hospitalization costs, and that public disclosure of hospital cost reports was necessary to encourage an open market situation.

We think, theerfore, that section 442, subdivision (a) is reasonable and responds to the problems perceived by the Legislature. The purpose of public disclosure is to enable public agencies and private citizens to make informed decisions about planning and purchasing health care; to encourage public and private third party payors to use this information to ascertain fair and reasonable premium rates; and to insure that the total cost for health care is reasonably related to the total services offered (§ 441).

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[6]As the Commission points out, public disclosure of financial information is a frequently used method to bring accountability to an industry (e.g., Employee Retirement Income Security Program, 29 U.S.C. §§ 1001-1381; Securities Act of 1933, 15 U.S.C. § 77a, et seq.; Uniform Supervision of Trustees for Charitable Purpose Act, Gov. Code, § 12580, et seq.)).

Accordingly, we conclude that section 442, subdivision (a) of the Act does not invade a zone of privacy protected by the U.S. Constitution.

The inalienable right of privacy guaranteed by article I, section 1 of the state Constitution[7] protects a larger zone in the area of financial and personal affairs than the federal right (Valley Bank of Nevada v. Superior Court, 15 Cal.3d 652, 656-657; Burrows v. Superior Court, 13 Cal.3d 238). However, our Supreme Court recently held in People v. Privitera, 23 Cal.3d 697, 707, that there is a presumption of constitutional validity and no trespass into the forbidden zone of privacy where health and health care legislation are involved.[8] Thus, the state standard initially also requires a legitimate and reasonable state interest and means that bear a real and rational relation to the object sought to be obtained (Blinder v. Division of Narcotic Enforcement, 25 Cal.App.3d 174, 179; People v. Privitera, supra, at p. 709). We have already indicated above that this standard has been met here.

Even assuming without conceding that under the state standard we must apply the strict scrutiny test here, we think the state's legitimate interest in the quality, cost and availability of hospital facilities outweighs Wilson's in-

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[7]As reworded by the constitutional amendment of 1974, article I, section 1 now reads as follows: "All people are by nature free and independent, and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and *pursuing* and obtaining safety, happiness, and *privacy*." (Emphasis added.)

[8]Health care legislation is a proper exercise of police power (Aden v. Younger, 57 Cal.App.3d 662, 672, 681; Blinder, supra, 25 Cal.App.3d 174).

terest in having the financial information about the cost of operating its facility remain unavailable to the public. Wilson's state right to privacy is not an absolute right, but one that may be outweighed by supervening public concerns. Thus here, public disclosure is properly compelled (cf. Division of Medical Quality v. Gherardini, 93 Cal.App. 3d 669, 679).

Wilson also argues that its facility has not received or sought any public funds.[9] However, this is not significant in light of the express legislative finding that health facilities are affected with the public interest and involved in the distribution of essential services. This is in accord with existing case law indicating thaat both nonprofit and investor owned hospitals are quasi-public trusts (Anton v. San Antonio Community Hosp., 19 Cal.3d 802; Ascherman v. Saint Francis Memorial Hosp., 45 Cal.App.3d 507) and the extensive and close state supervision to which hospitals are and have been traditionally subjected.

Wilson's argument also overlooks the fact that the scope of the disclosure required is properly limited and consistent with the purposes of the legislation. Thus, the owner of a health care facility is not required to report any

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[9]As the Commission notes, there are many indirect sources of public funds, such as workmen's compensation and public employee health insurance that flow to hospitals. Further, recent legislation requires that almost all health insurance policies afford coverage for the specialized treatment provided by Wilson's facility (§ 1367.2; Ins. Code, §§ 10123.6, 11512.14).

activities unrelated to the operation of that facility (see § 441.2, 441.18,[10] set forth, so far as pertinent, below).

As to the burden of the uniform reporting requirements of the Act, Wilson overlooks the regulations providing for requests for modification to approved accounting systems (Cal. Admin. Code, tit. 4, § 7050).

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[10]Section 441.18:

"Every organization which operates, conducts, or maintains a health facility and the officers thereof, shall make and file with the commission, within four months after the close of the organization's calendar or fiscal year for all annual accounting periods to which the systems of accounting and uniform reporting approved under Section 441.17 are made applicable thereby, all of the following reports on forms specified by the commission which shall be in accord with such systems of accounting and uniform reporting all of the following:

"(a) A balance sheet detailing the assets, liabilities, and net worth of the health facility at the end of its fiscal year.

"(b) A statement of income, expenses, and operating surplus or deficit for the annual period ending on the balance sheet date.

"(c) A statement detailing the source and application of funds expended by the health facility for the period encompassed by the income statement required by subdivision (b).

"(d) A statement reporting the information required in subdivisions (a), (b), and (c) of this section for each separately licensed health facility operated, conducted, or maintained by the reporting organization.

"(e) A report of health facility expenditures which allocates the costs of non-revenue-producing departments of a health facility to the other non-revenue-and revenue-producing centers which they serve . . . ."

We conclude, therefore, that section 442, subdivision (a) also does not invade a zone of privacy protected by the state Constitution.

Affirmed.

CERTIFIED FOR PUBLICATION.

TAYLOR, P.J.

WE CONCUR:

MILLER, J.

SMITH, J.

Appendix E

Clerk's Office, Supreme Court
4250 State Building
San Francisco, California 94102

Nov. 19, 1980

I have this day filed Order

HEARING DENIED

In re: 1 Civ. No. 47759

Wilson

vs.

California Health Facilities
Commission

Appendix F

§ 441. Findings and declarations

The Legislature hereby finds and declares:

(a) It is the policy of this state, as declared and established in this part, to require all health facilities which operate in this state to file for public disclosure with the California Health Facilities Commission which is established by this part such uniform reports of health facility cost experience in the provision of health care services as are provided for under this part in accord with the systems of accounting approved under this part, for all of the following purposes:

(1) Encouraging economy and efficiency in their provision of such services in this state.

(2) Enabling public agencies of this state which purchase health care services under, or which have administrative responsibility for, publicly financed health care plans or programs to make informed decisions in such purchasing or administration.

(3) Encouraging public and private third party payors for health facility services to take the information provided under this part into account in establishing reimbursement rates to assure health facilities of a fair and reasonable payment for such services rendered.

(b) It is the policy of this state that in order to achieve uniform and equitable statewide implementation of the policies of this part and to allow for comparisons of the performance of particular health facilities subject to its

provisions, it is necessary to require that every person, political subdivision of the state, or any governmental agency within the state, that establishes, conducts, operates, manages, maintains, or controls in this state any health facility complies with the provisions of this part.

(c) It is the policy of this state to have health facilities make available to the public the highest capabilities of health science in an effective, efficient manner. It is the policy of this state to provide reasonable and appropriate safeguards to insure that the total cost of health facility services is reasonably related to the total services offered by health facilities that the aggregate rates of health facilities are reasonably related to the aggregate costs of health facilities and that the rates charged by health facilities are uniform for all purchasers of health facility services, because the state has an obligation to assure access and availability of high quality, efficiently provided, economical health facility services for all persons in this state and because the expenditure of pubic funds of this state for providing health facility services to many persons has a large financial impact on the public funds of this state. Therefore, it is the declared policy of this state that health facilities are affected with the public interest, involved in the distribution of essential services, and obliged to furnish services to the general public at fair, equal, and nondiscriminatory rates.

§ 441.18. Reports by health facility to commission

Every organization which operates, conducts, or maintains a health facility and the officers thereof, shall make and file with the commission, within four months after the

close of the organization's calendar or fiscal year for all annual accounting periods to which the systems of accounting and uniform reporting approved under Section 441.17 are made applicable thereby, all of the following reports on forms specified by the commission which shall be in accord with such systems of accounting and uniform reporting all of the following:

(a) A balance sheet detailing the assets, liabilites, and net worth of the health facility at the end of its fiscal year.

(b) A statement of income, expenses, and operating surplus or deficit for the annual period ending on the balance sheet date.

(c) A statement detailing the source and application of funds expended by the health facility for the period encompassed by the income statement required by subdivision (b).

(d) A statement reporting the information required in subdivisions (a), (b), and (c) of this section for each separately licensed health facility operated, conducted, or maintained by the reporting organization.

(e) A report of health facility expenditures which allocates the costs of non-revenue-producing departments of a health facility to the other non-revenue-and revenue-producing centers which they serve, similar to the "step-down" or "double-apportionment" methods of cost finding used in reporting health facility cost experience under Title XVIII of the Federal Social Security Act.[1] Any health facility which participates in Title XVIII as a provider of health care services may elect to file the cost

data reports required under the regulations of the Social Security Administration in its administration of Title XVIII in place of the report required by the commision under the subdivision.

(f) The report required by subdivision (e) shall be accompanied by an accurate and sufficiently detailed statistical report containing data taken from the health facility's basic accounts and patient statistics as maintained under one of the systems approved in accordance with Section 441.17, which identifies costs related to categories, types or units of health care services delivered to patients by the operating departments of the health facility in accordance with a list of such services provided by the commission acting under the provisions of Section 441.15. Any health facility which participates in Title XVIII of the Federal Social Security Act may elect to file the statistical reports covering the provision of such health care services required under Title XVIII in place of the report required by the commission under this subdivision.

Health facilities described in subdivision (b) of Section 441.16 shall file such statements and reports, not inconsistent with subdivision (b) of Section 441.16, as the commission may reasonably require for the annual financial reporting period of such health facilities or group of health facilities.

The commission shall adopt forms of authentication for use by health facility officers or licensed accountants preparing reports under this section stating that each such

officer or accountant making the authentication believes that to the extent of his knowledge and information each statement in the report is true.

§ 442. Government agencies purchasing health facility services; copy of report as evidence

(a) The commission shall maintain a file of all the reports filed under Sections 441.18 and 442.1 at its Sacramento office. Subject to such rules as the commission may prescribe, such reports shall be produced and made available for inspection upon the demand of any person.

(b) Copies certified by the commission as being true and correct copies of reports properly filed with the commission pursuant to Section 441.18 together with summaries, compilations, or supplementary reports prepared by the commission pursuant to Section 442.1, shall be introduced as evidence, where relevant, at any hearing, investigation, or other proceeding held, made or taken by any state, county, or local governmental agency, board, or commission which participates as a purchaser of health facility services pursuant to the provisions of a publicly financed state or federal health care program. Each such state, county, or local governmental agency, board, or commission shall weigh and consider the reports made available to it pursuant to the provisions of this subdivision in its formulation and implementation of policies, regulations, or procedures regarding reimbursement methods and rates in the administration of such publicly financed programs.

§ 442.3. Failure to file; penalty

Any health facility which does not file any report required by Section 441.18 with the commission as provided therein is liable for a civil penalty of one hundred dollars ($100) a day to be assessed and recovered in a civil action brought in the name of the people of the State of California by the commission for each day the filing of such report with the commission is delayed, unless an extension is granted in accord with the guidelines and procedures established by the commission pursuant to Section 442.4. Any money which is received by the commission pursuant to this section shall be paid into the commission's operating fund which is established by Section 442.10.

No. 80-1394

In the Supreme Court of the United States

OCTOBER TERM, 1980

EMMETT C. WILSON, JR. and VERNA I. WILSON,
Appellant,

vs.

CALIFORNIA HEALTH FACILITIES COMMISSION,
Defendant and Appellee.

On Appeal from the Supreme Court of the State of California

Motion to Dismiss or Affirm

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Defendant and Appellee.

On Appeal from the Supreme Court of the State of California

Motion to Dismiss or Affirm

The appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the decision of the Court of Appeals, First Appellate District, State of California on the ground that the question on which the decision for the cause depends is so unsubstantial as not to need further argument.

I

THE STATE STATUTE INVOLVED AND THE NATURE OF THE CASE

A. The Statute

This appeal raises the question for the validity of a certain portion of the California Health Facilities Disclosure Act, California Health and Safety Code sections 440

et seq., and specifically section 442(a) thereof. These statutes were initially enacted in 1971 (California Statutes 1971, Ch. 1242, p. 2418) and applied solely to hospitals. However, effective July 1, 1975, this Act was amended to include all licensed health facilities (California Statutes 1974 Ch. 1171, p. 2511) thus affecting appellants herein.

This Act, as amended, provides that every health facility shall submit annual reports to the California Health Facilities Commission which set forth specified financial data concerning the health facility's operations. The Act requires these reports to be on forms supplied by the Commission and in accord with uniform accounting and reporting systems developed by the Commission.

Section 442(a) requires the Commission to maintain these reports and, subject to such rules as the Commission may prescribe, produce these reports for inspection upon the demand of any person.

B. The Proceedings Below

The appellant, after the effective date for the 1974 amendments to the Act, instituted this action contending the California Health Facilities Disclosure Act was invalid under the California and Federal Constitutions as violative of a right of privacy insofar as the Act allows public inspection of the financial reports submitted to the Commission. The Superior Court of California in and for the City and County of San Francisco, by its Judgment filed October 23, 1978, upheld the validity of the Act and denied appellant the relief sought. Upon appeal to the Court of Appeals, First Appellate District, the decision of the trial court was affirmed, 110 Cal.App.3d 317. The Supreme Court of California denied a hearing on November 19, 1980.

II

ARGUMENT

This Court has recognized a right of privacy that is founded upon the Fourteenth Amendments' concept of personal liberty and restriction on state actions. *Roe v. Wade,* 410 U.S. 113, 152-154 (1972). However, this privacy right is not absolute, and is balanced against legitimate state interests in safeguarding health and safety, *Ibid.;* in such cases the state is accorded wide latitude in experimenting with possible solutions to problems of vital local concern. *Whalen v. Roe,* 429 U.S. 598, 597 (1976).

The types of interest protected by the privacy right have been characterized as protection from governmental intrusion and independence in making decisions dealing with matters relating to marriage, procreation, contraception, family relationships, child rearing and education. *Whalen v. Roe, supra, Id.,* at 599-600.

This first type of interest is exemplified by decisions of this Court recognizing privacy interest in order to protect freedom of association, *Bates v. City of Little Rock,* 361 U.S. 516, 522-523 (1960); *NAACP v. Alabama,* 357 U.S. 449, 462 (1958). These cases recognized this privacy interest in order to promote the advancing of ideas and airing grievances. *Whalen v. Roe, supra,* 604 n. 32.

It is inconceivable that any reasonable argument can be made that public disclosure of the financial statistical data contained in the cost reports involved any cognizable associational interest.

Furthermore, this type of interest is exemplified by analysis of Fourth and Fifth Amendment cases.

This Court has held that for a right of privacy to arise by virtue of the Fourth Amendment, there must be governmental intrusion upon an interest in which there is a legiti-

mate expectation of privacy. *United States v. Miller,* 425 U.S. 435, 442, (1976).

In *Miller,* it was held there was no legitimate expectation of privacy in checks and deposit slips of a depositor/customer of a bank. This Court held that the depositor takes the risk in revealing his affairs to another, that the information will be conveyed to the government. *United States v. Miller, supra,* 443. It is inconceivable that submitting financial records *directly* to the government gives rise to any legitimate Fourth Amendment interest. cf. *Couch v. United States,* 409 U.S. 322, 335-336 (1972), (wherein it was held there is no Fourth or Fifth Amendment interest and therefore no right of privacy in financial records turned over to an accountant knowing that mandatory disclosure of much of the information is required in an income tax return); *United States v. Choate, supra,* 576 F.2d 165, 173-175 (9th Circuit 1978), no legitimate expectation of privacy in the information contained on the outside of mail. See also, *Plante v. Gonzalez,* 575 F.2d 1119 (5th Circuit 1978), mandatory financial disclosure for elected officials in Florida did not unconstitutionally violate any right of privacy.

Furthermore, as set forth above, this Court has held there is no legitimate Fifth Amendment interest in financial records turned over to an accountant realizing that the information would be disclosed to the government in the filing of a tax return. *Couch v. United States, supra.* It is as inconceivable under a Fifth Amendment analysis as under a Fourth Amendment analysis that a protected constitutional interest arises if the information is submitted directly to governmental authorities.

Finally, in his concurring opinion in *Griswald v. Connecticut,* 381 U.S. 479, 492-493 (1964), Justice Goldberg recognized a privacy interest arising out of the Ninth

Amendment that prohibited governmental intrusion into the sanctity of the marital relationship. No such interest is involved in these statistical financial reports.

The second type of privacy interest has arisen in circumstances wherein this Court has protected the decision making in matters dealing with marriage, procreation, contraception, family relationships, child rearing and education. *Whalen v. Roe, supra.* The public inspection of statistical financial reports simply does not invoke any such decision or decision making process.

This appeal involves no cognizable privacy interest. Appellant readily concedes the legitimacy of providing these reports to the state. There is no contention that patients, physicians or any patient family members would suffer any detriment by the public disclosure of these reports. In fact, such persons would benefit from disclosure.

Moreover, there is no cognizable harm to appellant from such disclosure. These reports contain financial statistical data limited solely to the operations of the health facility. There can be no diminution of a facilities competitive position *viz a viz* other providers since the reports of all health facilities are subject to public inspection. Moreover, the data required to be reported is limited to the costs of operating the facility and does not, in any significant manner, expose the purely personal finances of appellant to public perusal. The sole contention of this appeal is that the state is absolutely prohibited from allowing public inspection of these cost reports, notwithstanding the conceded fact that the state may legitimately require these reports and make full use of them in its routine regulatory functions, which include the setting of reasonable rates for reimbursement for those health facilities providing services pursuant to California's Medicaid, Title XIX of the Social Security Act, Program.

Such a contention is far afield from the interests recognized by this Court and is analogous to the claim rejected in *Paul v. Davis,* 424 U.S. 693, 712-713 (1975), holding there is no privacy interest prohibiting a state from publicizing an arrest. See also, *Havas v. Thorton,* 609 F.2d 372, 375-376 (9th Circuit 1979), there is no privacy interest prohibiting a state from instituting a civil action for alleged deceptive or misleading advertising, false and deceptive trade practices and making unauthorized repairs to a motor vehicle.

Moreover, the primary purpose in enacting the Health Facilities Disclosure Act was to make available to the public the highest level of health services through the public's informed ability to obtain these services. California Health and Safety Code section 441. This important state interest manifestly outweighs any interest appellants, as operators of a 360 patient hospital, have in shielding the costs of operating this hospital from public inspection.

The financial data disclosed in the costs reports is limited solely to the operations of the health facility and the public disclosure of such data serves as an innovative method of furthering an important state interest.

III

CONCLUSION

THEREFORE, appellee respectfully submits that the question upon which this cause depends is so unsubstantial as not to need further argument, and appellee respectfully moves the Court to dismiss this appeal, or in the alternative, to affirm the decision of the Court of Appeals, First Appellate District, State of California.

Respectfully Submitted,

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